

Message Text

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11

ACTION TRSE-00

INFO OCT-01 EA-11 ISO-00 NEA-10 IO-14 L-03 H-03 PA-04

PRS-01 USIA-15 SPC-03 AID-20 EB-11 NSC-10 RSC-01

CIEP-02 SS-20 STR-08 OMB-01 CEA-02 CIAE-00 COME-00

FRB-02 INR-10 NSAE-00 XMB-07 OPIC-12 LAB-06 SIL-01

DRC-01 /179 W

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R 140827Z NOV 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 8158

INFO AMEMBASSY BANGKOK

AMEMBASSY VIENTAANE

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USADB

TREASURY FOR FINKEL PASS BEACH

BANGKOK FOR RED

E O 11652: ADS, DECLAS 6/30/74

TAGS: EAID, EFIN, LA

SUBJ: LAOS: NAM NGUM HYDROPOWER PROJECT

ADB LEGAL OFFICER DARYL WILLIAMS ASKS THAT YOU DISCUSS
FOLLOWING WITH KEN RABIN, AID:

1. IN COURSE OF INFORMAL DISCUSSIONS AT RECENT MEETING
OF CONTRIBUTORS BETWEEN MEMBERS OF USDEL AND ADB STAFF,
USDEL INDICATED THAT US GOVT WOULD PREFER BANK, IN
APPROVING PROPOSALS FROM ROYAL GOVT OF LAOS REGARDING
OWNERSHIP, OPERATION AND MAINTENANCE OF NAM NGUM HYDRO-
POWER FACILITIES AND DISPOSITION OF ANY INCOME ARISING
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FROM OPERATION OF SUCH FACILITIES (SEE SEC 6.10 OF

DRAFT FUND AGREEMENT), TO ACCORD FIRST PRIORITY TO REPAYMENT OF PRINCIPAL AND INTEREST BY LAOS TO CONTRIBUTING PARTIES MAKING LOANS TO LAOS FOR PROJECT.

2. DURING MEETING ITSELF, JAPANESE DELEGATION INDICATED AS ONE OF CONDITIONS OF JAPANESE CONTRIBUTION THAT "REVENUE DERIVED FROM ENERGY SALES TO THAILAND TO BE ADMINISTERED AND UTILIZED IN SOUND WAY WITH VIEW TO MEETING FUTURE LOAN REPAYMENTS".

3. BOTH THESE VIEWS APPEAR TO IMPLY THAT LAOS MIGHT CREATE CHARGE OR LIEN ON NAM NGUM FOREIGN EXCHANGE EARNINGS IN FAVOR OF LOAN CONTRIBUTORS.

4. IN PRACTICE, LAOS WOULD HAVE DIFFICULTY IN CREATING ANY SUCH CHARGE. UNDER LOAN AGREEMENTS FOR ALL PREVIOUS ADB LOANS TO LAOS (LOAN NO. 28 LAO (SF): THA NGON AGRICULTURAL DEVELOPMENT PROJECT, LOAN NO. 65 LAO (SF) VIENTIANE POWER DISTRIBUTION PROJECT AND LOAN NO. 128 LAO (SF); VIENTIANE POWER DISTRIBUTION PROJECT - SUPPLEMENTARY LOAN), LAOS HAS UNDERTAKEN NEGATIVE PLEDGE OBLIGATION, THAT IS, LAOS HAS AGREED NOT TO GRANT ANY LIEN ON GOVERNMENTAL ASSETS WITHOUT CREATING EQUAL PRO-RATA LIEN IN FAVOR OF ADB TO SECURE REPAYMENT OF RELEVANT LOAN. ANY FUTURE LOANS TO LAOS WILL ALMOST CERTAINLY BE MADE ON SIMILAR TERMS. LAOS HAS ALSO UNDERTAKEN SIMILAR NEGATIVE PLEDGE OBLIGATION IN FAVOR OF KREDITANSTALT FUER WIEDERAUFBAU (KFW) UNDER GUARANTEE OF RECENT LOANS BY KFW TO ELECTRICITE DU LAOS. LAOS MAY HAVE UNDERTAKEN SIMILAR NEGATIVE PLEDGE OBLIGATIONS IN FAVOR OF OTHER EXTERNAL DEBTORS. THUS, IF THERE IS ANY CHARGING OF NAM NGUM FOREIGN EXCHANGE EARNINGS, CHARGE MIGHT HAVE TO BE EXTENDED FOR BENEFIT OF OTHER EXTERNAL DEBTORS. CREATION OF LIEN IN CASE OF NAM NGUM LOANS MIGHT ALSO CONSTITUTE DIFFICULT PRECEDENT FOR LAOS IN ITS FUTURE DEALINGS WITH DONOR GOVTS.

5. THERE ARE OTHER PRACTICAL DIFFICULTIES. LOANS FOR NAM NGUM PROJECT WILL HAVE LONG MATURITIES. FOREIGN EXCHANGE EARNINGS FROM PROJECT WILL CEASE LIMITED OFFICIAL USE

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PROBABLY IN EARLY 1990'S WHEN POWER DEMAND IN LAOS CATCHES UP WITH GENERATION CAPACITY OF NAM NGUM FACILITIES. THIS WOULD BE LONG BEFORE LOAN REPAYMENTS WOULD HAVE CONCLUDED. IN ADDITION, ACTUAL CASH INFLOW OF FOREIGN EXCHANGE EARNINGS AND CASH OUTFLOW OF PAYMENTS IN RESPECT OF LOANS ARE NOT READILY COMPATIBLE.

6. IN VIEW OF DIFFICULTIES STATED IN PARAS 4 AND 5

ABOVE, IT WOULD BE PREFERABLE THAT LAOS NOT BE
REQUIRED TO CREATE ANY CHARGE ON NAM NGUM FOREIGN
EXCHANGE EARNINGS IN FAVOR OF CONTRIBUTORS MAKING
LOANS FOR PROJECT.
PURNELL

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